

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WP(C).No. 22647 of 2007(U)

PETITIONER:

**ABDUL RASHEED PARAKKODAN, REPRESENTED
BY THE POWER OF ATTORNEY HOLDER N.ASHRAF,
S/O.ABOOBACKER, NEDUNGATT HOUSE, MACHINGAL,
MELMURI P.O., MALAPPURAM DISTRICT.**

**BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR**

RESPONDENTS:

- 1. THE DISTRICT COLLECTOR, MALAPPURAM.**
- 2. THE REVENUE DIVISIONAL OFFICER,
PERINTHALMANNA, MALAPPURAM DISTRICT.**
- 3. THE TAHSILDAR, PERINTHALMANNA,
MALAPPURAM DISTRICT.**

BY GOVERNMENT PLEADER SRI. M.R. SABU

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Kss

WPC.NO.22647/2007U

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1: COPY OF THE ASSESSMENT ORDER ISSUED BY THE
3RD RESPONDENT DTD. 25/08/2005.**

EXT.P2: COPY OF THE ORDER DTD. 24/01/2006.

EXT.P3: COPY OF THE ORDER DTD. 22/11/2006.

EXT.P4: COPY OF THE ORDER DTD. 20/03/2007.

EXT.P5: COPY OF THE ORDER DTD. 2/07/2007.

RESPONDENT'S ANNEXURE:

**EXT.R1(A): REPORT OF THE ASSISTANT ENGINEER PWD BUILDINGS
DIVISION, MALAPPURAM DTD. 23/06/2006 ALONG WITH THE
PLAN.**

/TRUE COPY/

P.A. TO JUDGE

KSS

ANTONY DOMINIC, J.

W.P.(C)NO.22647 OF 2007 -U

Dated this the 1st day of December, 2007.

JUDGMENT

Exhibit P2 is an order of assessment of luxury tax of a residential building. This was on the basis that the plinth area of the building was 313.8 sq.m. Petitioner challenged the said assessment in an appeal which was disposed of by Ext.P2 by remanding the matter for reconsideration. It was also directed that the plinth area shall be reassessed by the PWD Engineer.

2. It is stated that, accordingly, the plinth area was remeasured and by Ext.P3, the Tahsildar issued fresh proceedings re-assessing the plinth area to be 319.74 sq.m. It was also found that there are two car porches and one fire wood storage place having a total plinth area of 53.33 sq.m. Thus, excluding the area of car porches and fire wood storage place, taxable plinth area was assessed to be 266.41 sq.m. Again an appeal was filed and by Ext.P4, the R.D.O held that, of the two car porches, only one could be excluded in view of the proviso to Section 5(5) of the Kerala Building Tax Act. Thus excluding one

car porch, the R.D.O found that total plinth area was 278.7 sq.m. This order of the appellate authority was confirmed in revision and challenging Exts.P1 and P3 to P5, this writ petition has been filed.

Proviso to Section 5 (5) is extracted below for reference.

“Provided that the plinth area of a garage or any other erection or structure appurtenant to a residential building used for the purpose of storage of firewood or for any non-residential purpose shall not be added on the plinth area of that building”.

3. A reading of the above proviso would indicate that plinth area of a garage is liable to be excluded and not to be included in the plinth area that has to be reckoned for the purpose of levying luxury tax. If that be so, there is no warrant for assigning a restricted interpretation to the proviso to the effect that it is intended only to exclude only one garage. It is not uncommon that a residential building may have more than one garage and I do not find any reason to accept the contention of the respondents that only one garage can be excluded. Similar is the interpretation that I will assign to the proviso to Section 6 as well. If that be so, the interpretation given by the authorities

and the order now passed by the appellate authority and confirmed by the revisional authority in Ext.P4 and Ext.P5 cannot stand.

4. Accordingly, Exts. P4 and P5 will stand quashed. The 3rd respondent shall exclude the plinth area occupied by the garages and also fire wood storage and issue a fresh demand to the petitioner in accordance with law.

The writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE.

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